

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DANIEL JEROME JACKSON,

Defendant-Appellee.

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UNPUBLISHED

May 25, 2010

No. 291199

Wayne Circuit Court

LC No. 08-016934

Before: SAAD, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

The prosecutor appeals by leave granted a circuit court order affirming a district court order dismissing charges against defendant for open murder, MCL 750.318, and possession of a firearm during the commission of a felony, MCL 750.227b, following a preliminary examination. Because the evidence presented at the preliminary examination created an issue of fact whether defendant acted in lawful self-defense, we reverse and remand.

Defendant was charged with open murder and felony-firearm for fatally shooting Devonte Theus. The district court declined to bind defendant over for trial, finding that the evidence at the preliminary examination permitted no conclusion other than that defendant acted in self-defense. The prosecution appealed to the circuit court, which similarly found as a matter of law that defendant had acted in self-defense.

A district court's decision declining to bind a defendant over for trial is reviewed for an abuse of discretion. *People v Yamat*, 475 Mich 49, 52; 714 NW2d 335 (2006). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *People v Carnicom*, 272 Mich App 614, 617; 727 NW2d 399 (2006) (quotation and alteration omitted). A circuit court's decision concerning a district court's bindover ruling is reviewed de novo. *People v Crippen*, 242 Mich App 278, 282; 617 NW2d 760 (2000). We "give[] no deference to the circuit court's decision." *People v Henderson*, 282 Mich App 307, 313; 765 NW2d 619 (2009). Rather, we "review[] the bindover decision de novo to determine whether the district court abused its discretion." *Id.*

The purpose of a preliminary examination "is to determine whether a crime has been committed and, if so, whether there is probable cause to believe that the defendant committed it." *People v Hunt*, 442 Mich 359, 362; 501 NW2d 151 (1993). At the conclusion of the preliminary examination, it is the duty of the district court to bind a defendant over for trial if the evidence

establishes probable cause to believe both that an offense has been committed and that the defendant committed it. MCL 766.13; MCR 6.110(E).

Probable cause to believe that the defendant has committed a crime is established by evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the defendant's guilt. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003). To establish that a crime has been committed, the prosecutor must present evidence of each element of the crime charged or evidence from which the elements can be inferred, although the evidence need not establish guilt beyond a reasonable doubt. *People v McBride*, 204 Mich App 678, 681; 516 NW2d 148 (1994). In determining probable cause, the district court may consider the credibility of the witnesses, *Yost*, 468 Mich at 127-128, and evidence in defense, *People v King*, 412 Mich 145, 153-154; 312 NW2d 629 (1981). But if the evidence conflicts or otherwise creates a reasonable doubt concerning the defendant's guilt, the defendant should be bound over for resolution of the issue by the trier of fact. *People v Selwa*, 214 Mich App 451, 457; 543 NW2d 321 (1995). Thus, if "there is credible evidence to both support and negate the elements of the crime," the defendant should be bound over because "questions of fact exist that must be determined by the jury." *People v Grayer*, 235 Mich App 737; 744 n 3; 599 NW2d 527 (1999).

Defendant was charged with open murder, which means that at the preliminary examination the prosecution had to present evidence that a murder occurred, but was not required to present evidence of premeditation and deliberation. *People v Coddington*, 188 Mich App 584, 592-594; 470 NW2d 478 (1991). Rather, it is up to the trial court or the jury to determine the degree of the offense. *People v Watkins*, 247 Mich App 14, 20-21; 634 NW2d 370 (2001), *aff'd* 468 Mich 233 (2003). A murder is essentially an intentional killing committed with malice and that is neither justified nor excused. *People v Mendoza*, 468 Mich 527, 538-540; 664 NW2d 685 (2003); *People v Mesik (On Reconsideration)*, 285 Mich App 535, 545-546; 775 NW2d 857 (2009). A killing is justified or excused if it is done in self-defense. *People v Dupree*, 284 Mich App 89, 100-101; 771 NW2d 470 (2009); *People v Kurr*, 253 Mich App 317, 320-321; 654 NW2d 651 (2002).

A defendant acts in self-defense when he "honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm." *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). The use of deadly force in self-defense is justified if each of the following is shown: (1) the defendant honestly and reasonably believed that he was in danger, (2) the danger which the defendant feared was serious bodily harm or death, and (3) the action taken by the defendant appeared at the time to be immediately necessary, i.e., the defendant is only entitled to use the amount of force necessary to defend himself. MCL 780.972(1)(a); *Heflin*, 434 Mich at 502; *People v Deason*, 148 Mich App 27, 31; 384 NW2d 72 (1985). Whether the defendant acted in self-defense is usually a question reserved for the trier of fact. *People v Prather*, 121 Mich App 324, 330; 328 NW2d 556 (1982).

The evidence showed that on Sunday, September 21, 2008, defendant, his brother Chris, and several other young men were involved in a physical altercation with members of a gang known as the Hustle Boys. Gang members then threatened to kill defendant or his family. Defendant's mother and his friend, Edward Raymore, took the threats seriously. Defendant acquired an AK-47 firearm for protection. He, Chris, Raymore, and several others, including Devonte, brothers Jamar and Dominique Theus, twins Ravonne and Vondell Moore, spent that

night and Monday at defendant's house in case the Hustle Boys retaliated. Sometime on Monday night, Devonte, Jamar, Dominique, and the twins left the house. Apparently at some point before the shooting, defendant received a call from someone who said that "the people down the street was pointing beams on our house," meaning that the Hustle Boys had laser gun sights targeting the house. Raymore claimed to have actually seen the beams and said that others who were present saw them as well. Jamar returned and reported that he had been "jumped" at the store. There was conflicting evidence whether the people who jumped Jamar were the Hustle Boys. Both Chris and Raymore testified that, not long after Jamar returned to the house, Jamar looked out the window and said "there they go." Dominique, who was outside, returning to the house with Devonte, and the twins, reported hearing someone in the house say "that's them right there." Raymore testified to seeing "four guys running towards the house." Defendant stated, "Y'all not about to get to my mama," and opened fire with the AK-47. But the four people approaching the house were not gang members. Instead, they were Dominique, Devonte, and the twins. Devonte was shot by defendant and died from multiple gunshot wounds.

We conclude that the district court abused its discretion in refusing to bind defendant over for trial on the charges of open murder and felony-firearm because reasonable doubt exists whether defendant acted in lawful self-defense. In particular, the evidence creates reasonable doubt whether defendant's response of firing an AK-47 from a second story window on the four individuals entering the front yard was immediately necessary. The four individuals were not positively identified as members of the Hustle Boys before defendant opened fire. There was conflicting testimony whether the streetlights were on, such that defendant could have seen and recognized the four individuals. Even if defendant was unable to recognize the individuals, there was evidence that defendant knew or should have known that the four individuals were not the Hustle Boys. Dominique testified that he called out to alert those in the house that he was there, "saying hey we coming, open the door, you know, stuff like that," and Jamar confirmed that he heard "my brother and them voice" coming from outside. In addition, the individuals in the front yard had not yet presented an actual threat to the occupants of the house. They had not fired a weapon at the house, nor had they attempted to enter the house. Further, because the individuals were only in the front yard, it is arguable whether they presented an immediate threat to defendant and the other occupants of the house. Thus, while a rational juror could find that defendant honestly believed that the Hustle Boys were on their way to get him, there was evidence from which a rational juror could find that defendant did not have a reasonable belief that the use of deadly force was immediately necessary.

Reversed and remanded to the district court for entry of an order binding defendant over for trial as charged. We do not retain jurisdiction.

/s/ Henry William Saad  
/s/ Joel P. Hoekstra  
/s/ Deborah A. Servitto